

DECISION

THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

W. Stockton
PJ 47 II
119012

FILE: B-207741

DATE: July 20, 1982

MATTER OF: Lieutenant Commander James A. Aldridge, USN

DIGEST: A Navy officer with 10 years of service lost his eligibility for flight pay, but because of an administrative error he continued to receive it for 23 more months. He seeks to have the resulting debt waived. While he received a pay increase and some per diem at about the time he lost entitlement to flight pay, this was not sufficient to account for the amount of increase in pay he received at a time when he should have expected the loss of the substantial flight pay payments. He should have been aware he was receiving more pay than he was entitled to and requested a detailed explanation. Since he did not do so, he is considered at fault and his debt may not be waived.

Lieutenant Commander James A. Aldridge, USN, requests reconsideration of the denial of waiver of his \$3,772.17 debt to the Government resulting from overpayments of flight pay. Our Claims Division denied his waiver request and his appeal of that denial was forwarded to us. We find that under the circumstances Commander Aldridge should have known he was being overpaid, and accordingly we sustain the denial of waiver.

In 1973 Commander Aldridge (then an ensign with over 9 years of service) was participating in flight training school and was receiving flight pay in the amount of \$155 per month. In November 1973 he was removed from flight training status and consequently lost his eligibility for flight pay. See 37 U.S.C. § 301(a) (1970). Due to administrative error, however, he continued to receive the pay, which later increased to \$170 per month. Commander Aldridge claims he was not aware the flight pay continued until he requested a breakdown of his pay and allowances on October 15, 1975, for other reasons. During this 23-month period he received flight pay totaling \$3,772.17 to which he was not entitled.

Under 10 U.S.C. § 2774 the Comptroller General may waive debts arising out of erroneous payments to service members when collection would be against equity and good conscience and not in the best interests of the United States. However, the statute does not

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operate automatically to relieve debts but is a matter of grace and dispensation. Matter of Wendell, B-200118, February 18, 1981. Also, in certain situations a waiver is statutorily prohibited. Thus, if in the opinion of the Comptroller General, there exists "an indication of fraud, misrepresentation, fault, or lack of good faith on the part of the member * * *" waiver is precluded, 10 U.S.C. § 2774(b).

We consider "fault," as used in the statute, to exist if in light of all the facts it is determined that the member should have known that an error exists and taken action to have it corrected. The standard we apply is whether a reasonable person should have been aware that he was receiving payment in excess of his proper entitlement. See Matter of Lippman, B-202826, July 8, 1981, and Matter of Frome, B-199808, March 23, 1981.

The record in this case shows that Commander Aldridge continued to receive flight pay for 23 months following his removal from flight training. He claims that he was not aware the flight pay continued because there was so much fluctuation in his pay during October, November, and December 1973, when the erroneous payments began. His paycheck did not significantly decrease, as one might expect, and Commander Aldridge indicates he believed this was because the loss of flight pay was offset by a 10-year longevity raise, an annual pay raise, and per diem payments.

However, \$155 to \$170 monthly was a substantial amount of the total monthly payments he was receiving. While Commander Aldridge says he was assured by a disbursing clerk in January 1974 that his flight pay had stopped, we have held that verbal assurances are not enough to clear a person of fault when the size of payment alone may indicate that an error has been made. See Matter of Cannon, B-200919, March 27, 1981. In Commander Aldridge's case the pay record shows that during July-September 1973 the semi-monthly payments he received, after various deductions, were \$299. His October payments were \$391 and \$407, and the payments he received for the remainder of 1973 and into 1974 were about \$400 each. While he did receive a pay raise and longevity increase in October and November 1973, which combined would be about a \$39 gross increase in semi-monthly pay, that would not account for the increase he received at a time when he should have expected a substantial reduction as a result of loss of flight pay. Also, the receipt of some per diem payments as a result of a change of station would not account for the continuous overpayments over an extended period.

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Commander Aldridge claims he kept track of his pay and allowances by checking his Leave and Earnings Statements and they contained no reference to flight pay. However, the Navy Family Allowance Activity advises that prior to January 1976, flight pay was not being reflected on Commander Aldridge's Leave and Earnings Statements; that is, both when he was being paid flight pay correctly and erroneously. Thus, the Navy indicates that his statement in that regard is irrelevant.

In our opinion, in these circumstances, a reasonably prudent person with Commander Aldridge's experience in the service should have been aware that he was receiving payments substantially in excess of his entitlement and should have requested a detailed explanation of his pay and allowances. At that point it would have become obvious that he was still receiving flight pay. Therefore, we conclude that Commander Aldridge was not free from fault here, and we cannot waive his debt.

For these reasons we sustain our Claims Division's denial of waiver of Commander Aldridge's debt.

Sheldon J. Fowler
for Comptroller General
of the United States